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Counterplan Text: The Governments of All 50 States, the District of Colombia and All Relevant Territories Should (INSERT AFFIRMATIVE PLAN TEXT)

Federal Transportation Funding is Wasteful, Inefficient and Delays Successful Innovation

[Gabriel Roth](#), Research Fellow, The Independent Institute, "Phase out federal transport financing!" National Journal Transportation Blog, May 21st, 2012 (<http://transportation.nationaljournal.com/2012/05/not-waiting-for-the-feds.php?print=true&printcomment=2212918>)

The principle of "subsidiarity" postulates that government decisions should occur at the lowest practicable level, for example locally rather than nationally. This principle suggests that it is indeed time to relieve the federal government of the burden of financing transportation infrastructure, and of the onus of having to raise the required fees or taxes, and return these responsibilities to the states. The following reasons come to mind:

1. The purpose of federal financing — completion of the Interstate Highway System — has been virtually achieved, and it is difficult to identify other advantages from federal financing.
 2. The disadvantages of federal financing — increased costs and intrusive regulation — are evident and substantial.
 3. Congress, unable to increase the taxes dedicated to roads, seeks to use general funds to finance some of the transportation expenditures it considers necessary, thus abandoning the US traditional "user pays" principle for roads.
 4. Congress keeps deferring long-term road legislation and substituting short-term extensions of previous (2005) legislation, thus hindering long-term planning of transportation projects.
 5. New methods to pay for road use — such as mileage-based user fees to replace fuel taxes — are more likely to succeed as a result of innovations sought by different states, than if imposed by a federal government seeking a "one size fits all" solution.
- Reliance on general funds has the critical disadvantage that allocations to transportation from general revenues have to compete against other legitimate claims such as defense. On the other hand, when funding is by user fees, expenditures on infrastructure are determined by users' willingness to pay.

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Federal Government is Rolling Back Authority to State Governments Now—Transportation Dollars are Crucial to Federalism and Better Spent By The States—The Plan Eliminates Important Advances in Federalism

Capital Beat OK, "Capitol Beat OK: Transportation Federalism -- and Flexibility -- Proposed in New Bill from Coburn, Lankford," July 29th, 2011

(http://lankford.house.gov/index.php?option=com_content&task=view&id=756&Itemid=100023)

Joel Kintsel, executive vice president at OCPA, told CapitolBeatOK, "I am so proud of the leadership shown by Senator Coburn and Congressman Lankford. Hopefully, this is the beginning of a broader effort by Congress to return to federalism and withdraw from areas of activity rightfully belonging to the States."

Sen. McCain, the 2008 Republican nominee for president, said, "As a Federalist, I have long advocated that states should retain the right to keep the revenue from gas taxes paid by drivers in their own state. This bill would allow for this to happen and prevent Arizonans from returning their hard earned money to Washington. Arizonans have always received 95 cents or less for every dollar they pay federal gas taxes. This continues to be unacceptable, and for that reason I am a proud supported of the State Highway Flexibility Act."

Sen. Vitter asserted, "It's very apparent how badly Congress can mismanage tax dollars, especially the Highway Trust fund which has needed to be bailed out three times since 2008. The states know their transportation needs better than Congress, so let's put them in the driver's seat to manage their own gas tax."

Hatch contended, "The federal government's one-size-fits all transportation policies and mandates are wasting billions of taxpayer dollars and causing inexcusable delays in the construction of highways, bridges and roads in Utah and across the nation.

Sen. Cornyn said the Lone Star State can manage public transportation spending just fine, and the bill, "will provide Texas more flexibility to make transportation decisions locally and encourage innovative solutions to addressing our transportation infrastructure needs.

Kintsel, whose areas of focus for OCPA include constitutional and other legal policy issues, said, "Federalism is an indispensable check and balance between the States and the federal government and remains an important feature of our constitutional system. Unless it is a power expressly reserved by the Constitution to the federal government, Congress should not attempt to control the decisions of individual states. The more local decision making is eroded by an overbearing national government, the less freedom and ingenuity survives in states and local communities. In this instance, Oklahoma leaders will know how to use these transportation dollars far more efficiently than anyone outside of Oklahoma.

1NC

Federalism is the Most Important Factor in Preventing All Types of Warfare and Extinction

Steven G. Calabresi, Associate Professor, Law Northwestern University, "A Government of Limited and Enumerated Powers": In Defense of United States v. Lopez," MICHIGAN LAW REVIEW v. 94, December 1995, p. 770-771.

Small state federalism is a big part of what keeps the peace in countries like the United States and Switzerland. It is a big part of the reason why we do not have a Bosnia or a Northern Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem. 51 American federalism in the end is not a trivial matter or a quaint historical anachronism. American-style federalism is a thriving and vital institutional arrangement - partly planned by the Framers, partly the accident of history - and it prevents violence and war. It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare. It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain. There is nothing in the U.S. Constitution that is more important or that has done more to promote peace, prosperity, and freedom than the federal structure of that great document. There is nothing in the U.S. Constitution that should absorb more completely the attention of the U.S. Supreme Court. b. Internationalist Federalism: Preventing War, Promoting Free Trade, and Exploiting Economies of Scale. So far, I have focused on the advantages of American-style small-state federalism in defusing centrifugal devolutionary tendencies, alleviating majority tyranny, and accentuating crosscutting social cleavages. But what about the advantages of international federalism; what are the advantages of consolidating states into larger federal entities, as happened in North America in 1787 or in Europe in 1957? A first and obvious advantage is that consolidation reduces the threat of war. Because war usually occurs when two or more states compete for land or other resources, a reduction in the number of states also will reduce the likelihood of war. This result is especially true if the reduction in the number of states eliminates land boundaries between states that are hard to police, generate friction and border disputes, and that may require large standing armies to defend. In a brilliant article, Professor Akhil Amar has noted the importance of this point to both to the Framers of our Constitution and to President Abraham Lincoln. 52 Professor Amar shows that they believed a Union of States was essential in North America because otherwise the existence of land boundaries would lead here - as it had in Europe - to the creation of standing armies and ultimately to war. 53 The Framers accepted the old British notion that it was Britain's island situation that had kept her free of war and, importantly, free of a standing army that could be used to oppress the liberties of the people in a way that the British navy never could.

States Solvency—Saves Money**Federal Requirements on Transportation Infrastructure Projects Balloons Costs Over the States**

Michael Ennis, transportation director at Washington Policy Center, a non-partisan independent policy research organization, “WPC’s Recommendations on the State’s 2012 Transportation Tax Package, Part V,” February 2012 (<http://www.washingtonpolicy.org/publications/legislative/wpc-recommendations-2012-transportation-tax-package-part-v>)

Fortunately, Washington transportation officials use some of these same techniques here, but they face structural policies put in place by both federal and state lawmakers that artificially drive costs higher, however well-intentioned they may be. Studies show that imposing federal prevailing wage rules on transportation projects unnecessarily increases labor costs by 22% and boosts total project costs by about 10%.

Washington State Department of Transportation (WSDOT) officials are required to pay state sales taxes on state transportation projects. This means valuable transportation revenue (paid by drivers) is drawn out of the transportation budget and deposited into the state’s general fund, and then used to pay for non-highway projects like social services, education and general government. WSDOT officials estimate that project delivery costs could be reduced up to 8.5% if their projects were exempt from state sales taxes. The Office of Financial Management estimates WSDOT paid \$62 million in state sales taxes in 2010 on its capital construction projects.

The Federal Highway Administration (FHWA) estimates a typical Environmental Impact Statement took an average of 2.5 years to complete in the 1970s. Today it takes 6.5 years. And according to the FHWA, complex highway projects now take an average of 13 years to complete. Only a fraction of that time is spent on construction.

States Solvency—Saves Money**Federal Transportation Projects are Wasteful and Inefficient, Directed Towards Pointless Projects and Earmarks**

Gabriel Roth, transportation economist and research fellow at the Independent Institute, "Federal Highway Funding," CATO Institute, June 2010 (<http://www.downsizinggovernment.org/transportation/highway-funding>)

Federal aid typically covers between 75 and 90 percent of the costs of federally supported highway projects. Because states spend only a small fraction of their own resources on these projects, state officials have less incentive to use funds efficiently and to fund only high-priority investments. Boston's Central Artery and Tunnel project (the "Big Dig"), for example, suffered from poor management and huge cost overruns.²¹ Federal taxpayers paid for more than half of the project's total costs, which soared from about \$3 billion to about \$15 billion.²²

Federal politicians often direct funds to projects in their states that are low priorities for the nation as a whole. The Speaker of the House of Representatives in the 1980s, "Tip" O'Neill, represented a Boston district and led the push for federal funding of the Big Dig. More recently, Representative Don Young of Alaska led the drive to finance that state's infamous "Bridge to Nowhere," discussed below.

The inefficient political allocation of federal dollars can be seen in the rise of "earmarking" in transportation bills. This practice involves members of Congress slipping in funding for particular projects requested by special interest groups in their districts. In 1982, the prohibition on earmarks in highway bills in effect since 1914 was broken by the funding of 10 earmarks costing \$362 million. In 1987, President Ronald Reagan vetoed a highway bill partly because it contained 121 earmarks, and Congress overrode his veto.²³

Since then, transportation earmarking has grown by leaps and bounds. The 1991 transportation authorization bill (ISTEA) had 538 highway earmarks, the 1998 bill (TEA-21) had 1,850 highway earmarks, and the 2005 bill (SAFETEA-LU) had 5,634 highway earmarks.²⁴ The earmarked projects in the 2005 bill cost \$22 billion, thus indicating that earmarks are consuming a substantial portion of federal highway funding.

The problem with earmarks was driven home by an Alaska bridge project in 2005. Rep. Don Young of Alaska slipped a \$223 million earmark into a spending bill for a bridge from Ketchikan—with a population of 8,900—to the Island of Gravina—with a population of 50. The project was dubbed the "Bridge to Nowhere" and created an uproar because it was clearly a low priority project that made no economic sense.

States Solvency—Saves Money**Federal Transportation Spending is Over-regulated, Produces Dramatic Cost Overruns and Unnecessary Expenses**

Gabriel Roth, transportation economist and research fellow at the Independent Institute, "Federal Highway Funding," CATO Institute, June 2010 (<http://www.downsizinggovernment.org/transportation/highway-funding>)

The flow of federal funding to the states for highways comes part-in-parcel with top-down regulations. The growing mass of federal regulations makes highway building more expensive in numerous ways. First, federal specifications for road construction standards can be more demanding than state standards. But one-size-fits-all federal rules may ignore unique features of the states and not allow state officials to make efficient trade-offs on highway design.

A second problem is that federal grants usually come with an array of extraneous federal regulations that increase costs. Highway grants, for example, come with Davis-Bacon rules and Buy America provisions, which raise highway costs substantially. Davis-Bacon rules require that workers on federally funded projects be paid "prevailing wages" in an area, which typically means higher union wages. Davis-Bacon rules increase the costs of federally funded projects by an average of about 10 percent, which wastes billions of dollars per year.²⁷

Ralph Stanley, the entrepreneur who created the private Dulles Greenway toll highway in Virginia, estimated that federal regulations increase highway construction costs by about 20 percent.²⁸ Robert Farris, who was commissioner of the Tennessee Department of Transportation and also head of the Federal Highway Administration, suggested that federal regulations increase costs by 30 percent.²⁹

Finally, federal intervention adds substantial administrative costs to highway building. Planning for federally financed highways requires the detailed involvement of both federal and state governments. By dividing responsibility for projects, this split system encourages waste at both levels of government. Total federal, state, and local expenditures on highway "administration and research" when the highway trust fund was established in 1956 were 6.8 percent of construction costs. By 2002, these costs had risen to 17 percent of expenditures.³⁰ The rise in federal intervention appears to have pushed up these expenditures substantially.

States Solvency—Better Infrastructure**State Transportation Programs Do a Better Job Dispersing and Developing Infrastructure—
Avoid Specific Federal Earmarks that Limit Aid**

William D. Duncombe and Yilin Hou, Center for Policy Research at The Maxwell School and Department of Public Administration and Policy School of Public and International Affairs, University of Georgia, “SUBSTANTIATION OF TRANSPORTATION INFRASTRUCTURE – Patterns of Governance and Public Finance in Development: An Analytical Comparison of the United States and China,” Indian Institute of Management-Bangalore (IIMB), January 21-23, 2011 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744123)

While most of the funding is through formula grants, federal transportation acts have also become notorious for including funding of specific projects, commonly called —earmarks; SAFETEA-LU included funding of more than \$4 billion per year for over 5,500 projects earmarked for specific congressional districts.¹⁷ While federal transportation aid is important, state governments have the primary responsibility for selecting, funding, and implementing most transportation projects in the United States. State departments of transportation (DOT) are the major administrative organization managing government surface transportation programs.¹⁸ State DOT in many states carry out multi-year transportation plans¹⁹ and will work closely with the state governor to develop a list of capital projects to be included in the state government CIP. State legislatures are often very actively involved in decisions related to transportation capital projects because of the potential benefits to their constituency. The result of political compromise is typically a spreading of transportation funding across the whole state, rather than concentrating funds in high traffic areas. In summary, the federal DOT and state DOT play an important planning and implementation role but transportation decision making in the United States is ultimately in the hands of legislative bodies. The political reality of passing infrastructure development in a representative democracy often lead to wide dispersal of transportation projects.

States Solvency—Better Infrastructure/Funding**State Governments are Better Implementers of Transportation Infrastructure and Infrastructure Funding—Federal Role Should Just Be to Provide Cash**

Council of State Governments, “Infrastructure Key Part of Obama’s \$450 Billion American Jobs Act; Highway Bill Extension Clears a Hurdle,” September 9th, 2011 (<http://knowledgecenter.csg.org/drupal/content/infrastructure-key-part-obama%E2%80%99s-450-billion-american-jobs-act-highway-bill-extension-clears->)

“We already have a national infrastructure bank,” Geoffrey Yarema, a partner with the infrastructure-oriented law firm Nossaman LLP, told the public finance newspaper [The Bond Buyer](#) following the President’s speech. “It’s called the TIFIA program.”

TIFIA, which stands for Transportation Infrastructure Finance and Innovation Act, is a program originally created in 1998 that sets up loan partnerships between the federal government and state and local governments, transit agencies, railroads, special districts or authorities and private entities to provide financing for transportation projects of regional and national significance.

Veteran transportation analyst Ken Orski told Energy and Environment Daily that “there is a widespread sentiment both in the House and Senate, rather than creating a new federal fiscal bureaucracy, we ought to strengthen and expand existing financial instruments, primarily TIFIA.”

Some also believe the federal government might be wise to move to bolster existing and already successful state infrastructure banks instead of creating a national one. That’s the way that U.S. House Transportation and Infrastructure Committee Chairman John Mica has said he would like to go.

“A National Infrastructure bank run by Washington bureaucrats requiring Washington approval and Washington red tape is moving in the wrong direction,” Mica said in [a statement](#) after the President’s speech. “A better plan to improve infrastructure is to empower our states, 33 of which already have state infrastructure banks.”

States Solvency—Better Infrastructure/Local Decisions**State Control of Transportation Infrastructure Creates Better Decisions, Closer to the Projects and The Direction of Spending**

Capital Beat OK, "CapitolBeakOK: Transportation Federalism -- and Flexibility -- Proposed in New Bill from Coburn, Lankford," July 29th, 2011

(http://lankford.house.gov/index.php?option=com_content&task=view&id=756&Itemid=100023)

According to a press release from advocates in the nation's capital, "the State Transportation Flexibility Act that would allow state transportation departments to opt out of the Federal-Aid Highway and Mass Transit programs. Instead, these states would be able to manage and spend the gas tax revenue collected within their state on transportation projects without federal mandates or restrictions."

A total of 14 members of the Senate and 24 members of the House of Representatives have joined as co-sponsors. Besides the pair of Oklahomans, supporters included Sens. John McCain of Arizona, David Vitter of Louisiana, Orrin Hatch of Utah, John Cornyn of Texas, Johnny Isakson of Georgia, Daniel Coats of Indiana, Mike Lee of Utah, and Rob Portman of Ohio. Rep. Jeff Flake of Arizona is advocating for the bill in Congress, alongside Lankford.

In Oklahoma, a vice president at the Oklahoma Council of Public Affairs (OCPA) immediately applauded the bill's introduction.

In his statement, sent to CapitolBeatOK, Sen. Coburn said, "Washington's addiction to spending has bankrupted the Highway Trust Fund. For years, lower-priority projects like earmarks have crowded out important priorities in our states, such as repairing crumbling roads and bridges.

"Instead of burdening states and micromanaging local transportation decisions from Washington, states like Oklahoma should be free to choose how their transportation dollars are spent. I have no doubt that Oklahoma's Transportation Director Gary Ridley will do a much better job deciding how Oklahoma's transportation dollars are spent than bureaucrats and politicians in Washington."

States Solvency—More Efficient**Federal Government Should Get Out of The Way—Infrastructure Can Only Be Done Right With States in Control**

[Bruce Katz](#), Vice President and Director, Metropolitan Policy Program, "Strengthening Our Infrastructure for a Sustainable Future," Brookings Institution, February 22nd, 2009
(<http://www.brookings.edu/research/speeches/2009/02/22-infrastructure-katz>)

Then for the rest of the program, the federal government should get out of the way and allow states and metropolitan areas to choose the best mix of projects for their particular needs, goals, and objectives – and should hold them accountable for doing so.

Fortunately, just a few days ago President Obama signaled his support for the efficiency gains from metropolitan planning, for joining up energy and transportation policy, and for what he called "long-term reforms in how transportation dollars flow."

Clearly we have a golden opportunity to get infrastructure policy right for America. But it will require us to move beyond parochial grabs for more money and reject project log rolling. Instead the conversation around infrastructure needs to focus on the best way to move us out of our economic malaise and truly build America's future.

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| States Solvency—More Efficient |
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Federal Transportation Spending is a Mistake—Localized State Projects are More Direct and Efficient

[Edward Glaeser](#), Professor of Economics at [Harvard University](#), “Spending Won’t Fix What Ails U.S. Infrastructure: Edward Glaeser,” Bloomberg News, February 13th, 2012 (<http://www.bloomberg.com/news/2012-02-14/spending-won-t-fix-what-ails-u-s-transport-commentary-by-edward-glaeser.html>)

DE-FEDERALIZE TRANSPORT SPENDING: Most forms of transport infrastructure overwhelmingly serve the residents of a single state. Yet the federal government has played an outsized role in funding transportation for 50 years. Whenever the person paying isn’t the person who benefits, there will always be a push for more largesse and little check on spending efficiency. Would [Detroit](#)’s People Mover have ever been built if the people of Detroit had to pay for it? We should move toward a system in which states and localities take more responsibility for the infrastructure that serves their citizens. The federal government does have a role. It should ensure coordination in nationwide networks. It can embrace smart policies, such as the Education Department’s Race to the Top initiative, that provide incentives for innovation and reform, and the president’s budget seems to move in that direction. The government must go beyond just being the big spender cutting checks. Our current approach has produced a highway system in which, as the [Office of Management and Budget](#) once noted, “funding is not based on need or performance and has been heavily earmarked.” The House’s new highway bill may be earmark-free, but it does little to tie spending to need or performance.

States Solvency—Transportation Infrastructure**States Should Take the Lead on Transportation Infrastructure Projects—Reversing Federal Leadership is the Only Way to Succeed**

[Robert Puentes](#), Senior Fellow and Director, Metropolitan Infrastructure Initiative, “New Federalism Already Forming,” Brookings Institution Transportation Blog, May 22nd, 2012 (<http://transportation.nationaljournal.com/2012/05/not-waiting-for-the-feds.php?print=true&printcomment=2212918>)

The late 20th century model in transportation retained the standard federalism pyramid structure: with the federal government providing resources that rain down from the state, to metropolitan, and ultimately the local level. A new 21st century compact should flip the pyramid by challenging our nation's state and metropolitan leaders to develop deep and innovative visions to solve the most pressing transportation problems.

The [TIGER](#) program is a good example of the federal government acting as a permissive partner in advancing a range of bottom-up investments. And the proposal for a program for transportation modeled after the Education Department's Race-To-The-Top initiative could instill meaningful reforms on the state level, where most decisions are made.

But the initial question is also right in that, in the absence of Congressional action, states and localities are stepping in to finance the kind of major investments necessary to support the next economy.

Increasingly, public infrastructure investment is taking place through innovative finance tools, revolving loan funds, trusts, and so-called 'banks.' Most of these offer direct loans at low interest rates to public and private entities, while some also offer grants, loan guarantees, bonds, and other financial instruments. According to forthcoming Brookings research, since 1995 thirty-three states have used infrastructure banks and funds to invest nearly \$7 billion in over 900 different projects. These projects range from local road maintenance and highway construction to emergency relief for damaged infrastructure. The structure of the banks and projects in which they invest reflect the diversity of needs and resources across the U.S.

States Solvency—Native America

Ideas of Federal Control are Outdated—The Increased State Control Over and Recognition of Native American Tribes Has Been Critical to Creating and Restoring Federalist Balance

Alexa Koenig and Jonathan Stein, assistant professor at the University of San Francisco School of Law and trial lawyer, JD Harvard Law School, "FEDERALISM AND THE STATE RECOGNITION OF NATIVE AMERICAN TRIBES: A SURVEY OF STATE-RECOGNIZED TRIBES AND STATE RECOGNITION PROCESSES ACROSS THE UNITED STATES," Santa Clara Law Review, November 11th, 2007

(http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=alexa_koenig)

The ability of states to work directly with tribes does not fit traditional notions of state-federal-tribal dynamics, which were based on the conquering and subsuming of tribes within the national fabric. The federal government's role of purportedly "protecting" tribes from states⁶⁰ was viewed as appropriate within this traditional framework. However, it is not appropriate for a nation at peace. Traditionally, states and tribes have conflicted with one another over land and other precious resources. Consequently, the federal government's involvement was viewed (perhaps too optimistically) as necessary to ensure that a balance between state and tribal rights was retained. Modern ideals, encapsulated by our civil rights movement and the intrinsic value now recognized in indigenous cultures, multiculturalism and diversity, represent a different mindset than that fostered when one of the nation's top priorities was settling the continent by forcibly controlling its indigenous inhabitants, both legally and physically. This modern era—marked by the last forty to fifty years and coinciding with this country's civil rights movement—has produced another wave of tribal recognition by state governments. This time, however, recognition has come in a broader range of forms because resolutions passed by state legislatures, gubernatorial proclamations, and increasingly detailed statutes provide very explicit criteria for recognition.⁶¹ This criteria substantiates and lends additional authority to such recognition, an element largely missing from earlier forms of recognition. Fifteen of the sixteen states profiled in this Article have used some form of recognition process during this modern era, whether to substantiate prior recognition or establish state recognition for the first time.⁶² This modern era also represents a time when state authority has begun to shift back into balance with federal authority. While state recognition does not provide the same benefits as federal recognition, it does enable tribes to seek some progress in the face of federal intransigence, and allows states to better address domestic relationships and needs in their interactions with the Indian groups within their borders. The emerging paradigm is one of seeking mutual advantage and fostering positive relations for the future. States are increasingly recognizing that working with indigenous groups can be helpful to tourism, fill gaps in local history and benefit multiculturalism and diversity in education and other aspects of society. Concerns of settling a continent and dispossessing tribal groups are beginning to be replaced with a better appreciation of the many contributions of this nation's indigenous people. This comports with the original view of our federalist society as envisioned by James Madison in *The Federalist Papers*: [t]he powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security.⁶³

AT: Transportation Has National Impacts**National Affects Doesn't Justify Federal Action, Everything Has Them—State Action Needs to Take Precedent**

[Emil H. Frankel](http://transportation.nationaljournal.com/2012/05/not-waiting-for-the-feds.php?print=true&printcomment=2212918), Visiting Scholar, Bipartisan Policy Center, "Defining and Allocating Roles," National Journal Transportation Blog, May 22nd 2012 (<http://transportation.nationaljournal.com/2012/05/not-waiting-for-the-feds.php?print=true&printcomment=2212918>)

Whatever the outcome of the current Congressional process on authorizing federal surface transportation programs, the longer-term trend is clear: the federal share of transportation investment is, at best, stagnating and, at worst, declining.

These circumstances reverse a trend of half a century or more of growing federal surface transportation funding. It is evident that a greater portion of this funding and investment burden will now fall on states and localities.

But that is not the same thing, as devolution. There remains an important, if still inadequately defined, federal role in transportation. There are national goals and national purposes in transportation, and some projects are clearly national (to greater or lesser degrees) in scope and impact. There is, however, no clear line between these national, state, and local interests. Most "mega" projects involve a mix of interests: CREATE in Chicago has obvious local and Illinois benefits, but this program of rail and grade crossing improvements is probably most significant, in terms of the national benefits that it would generate.

Similarly, the ARC project (the proposed trans-Hudson River commuter rail tunnel), cancelled by Governor Christie after decades of planning and the initiation of construction, would have offered enormous benefits to the citizens and business firms of New Jersey and to the economy of the entire New York City region, but there were, and remain, strong reasons for a substantial federal role in this project, because of the impact of economic growth in the New York City region on national well-being and prosperity.

As Rob Puentes has noted, this is not an "either-or" situation, one of national versus state or local goals. Many programs and projects will involve all these interests, in varying measures and degrees, and the sources of funding should reflect this mix of purposes. What this debate demonstrates, however, is the need to define national goals more precisely, to reform the institutions that plan and program capital investments in the transportation sector, and to focus on performance and outcomes. These reforms are more urgent than ever, in the context of shrinking resources and the need to invest wisely in the more beneficial programs and projects.

And, if states and localities must do more, than Congress should remove the federal barriers to such state and local initiative and flexibility, such as the prohibition on tolling the Interstate Highway System, and should stop discouraging states and regions from attracting private capital to their transportation investment programs. Instead, the federal government should incentivize and reward those states and localities that do more to attract new sources of public and private investment capital to transportation. Federal funds and programs should, also, be used to leverage these new public and private sources, through the expansion of loan and credit enhancement programs, like TIFIA.

AT: Can't Solve Federal Jurisdiction**State Action Can Spur Federal Reforms—The Counterplan Solves Even Exclusive Portions of the Aff**

J.R. DeShazo & Jody Freeman, 2007, Harvard University School of Law, "[Timing and Form of Federal Regulation: The Case of Climate Change](#)," University of Pennsylvania Law Review, June, 2007 (Lexis)

We argue here that states can be important catalysts of a federal policy response by stimulating both pro-regulatory and anti-regulatory forces to appeal to the federal government for relief sooner rather than later. To explain this phenomenon we piece together and build on insights from two literatures: the environmental federalism scholarship, which predicts when environmentalists and state and local governments will appeal for federal regulatory floors to prevent a race to the bottom, and when states will do so to overcome interstate externalities (ISEs); and what we have labeled "defensive preemption theory" (DPT), which predicts when industry will seek federal regulatory ceilings. We show how, consistent with DPT, state regulation addressing climate change has prompted industry to seek uniform and preemptive federal regulation. In addition, we show that although the traditional assumptions of race-to-the-bottom theory (RBT) and ISE theory do not apply to climate change (and thus do not generate demand for federal regulation), state regulatory measures nevertheless leave pro-regulation forces unsatisfied and drive them to Congress for relief. Thus, state regulation aimed at climate change has produced a convergence of interest group support for federal intervention - what we call "hitting the regulatory sweet spot."

AT: No 50 State Action**Transportation is an Issue that Crosses State Lines—Interstate Cooperation is Realistic and Likely**

David C. Nice, University of Georgia, "State Participation in Interstate Compacts," Publius, Spring 1987 (JSTOR)

A final influence on compact participation may be interdependence. If actions in one state have no effect on another state, there is relatively little basis for cooperation. Conversely, if states are influenced by one another's actions, they may have a greater incentive to join in cooperative actions. When the number of affected parties is relatively small, cooperative efforts to correct for externalities are an alternative to intervention by the federal government.³² Interdependence may create a sense of shared fate or shared interests and, consequently, foster cooperation.³³ In addition, interdependence and interaction often go together, and increased interaction may help to create a sense of community.³⁴ As a result, greater interdependence should foster more interstate cooperation, a possibility supported by empirical findings.³⁵ Interdependence can be measured in a variety of ways. Two general approaches will be used here, one based on interstate metropolitan areas and the other based on distance. Many states have one or more metropolitan areas that straddle state lines. As a result, the usual metropolitan problems, such as crime, transportation, and health, become interstate problems as well. Other things being equal, a state which has more interstate metropolitan areas should have greater interdependence with other states and, therefore, be more likely to join interstate compacts. In a similar vein, a state which has interstate metropolitan areas that involve more states should have greater interdependence and, therefore, join more compacts.

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| AT: Permutation |
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Federal Funding Crowds Out State Money—Proves Increasing Federal Programs Don't Provide More Services

Mark Ragan, Rockefeller Institute, "BUILDING BETTER HUMAN

SERVICE SYSTEMS," 2003 (http://www.rockinst.org/pdf/workforce_welfare_and_social_services/2003-06-building_better_human_service_systems_integrating_services_for_income_support_and_related_programs.pdf)

Around this time, the Medicaid program³ was experiencing explosive growth, placing more stress on state budgets. In fact, the Medicaid program increased nearly 150 percent, from \$91.5 billion in 1991 to \$228 billion in 2001 (Snell, Eckl, & Williams, 2003). Several factors contributed to the increase in expenditures, including the early 1990s recession, which increased the number of families eligible for Medicaid; extensions in the Medicaid program to cover more of the uninsured, working poor; demographic trends that increased the share of enrollees who were disabled and required more medical services; and increases in the overall costs for medical services.

Some have expressed concern that spending on Medicaid will "crowd out" state spending on other social welfare programs, such as cash assistance (e.g., see Steuerle & Mermin, 1997; Ladenheim, 2002). Given state's increased flexibility in funding cash assistance, changed incentives, and increasing Medicaid costs, understanding how fiscal capacity, especially in poorer states, might affect state policy choices about social welfare programs is important.

AT: Permutation**State and Federal Overlap Sends Mixed Signals, Damages Federalism and Sovlency**

[Stephen L. Hayford](#) and Alan R. Palmiter, Prof of Business at Indiana University and Prof of Law at Wake Forest, "Arbitration Federalism: A State Role in Commercial Arbitration," Florida Law Review, April 2002 (Lexis)

The Supreme Court's stated understanding of the FAA has sent mixed signals about a state law-making role in commercial arbitration. On the one hand, the Court has interpreted the FAA to preempt state laws that negate or undermine the enforceability of commercial arbitration [*177] clauses-leaving no latitude for state regulation. On the other hand, the Court has understood the FAA to treat the question of contract revocation, on generally applicable grounds such as fraud, duress, and uncon-scionability, as one of state law-leaving no federal role. Additionally, on a variety of other matters affecting arbitration, the Court seems to recognize that the FAA speaks either ambiguously or not at all, such as post-award judicial review, arbitrators' standards of conduct and arbitral procedures-leaving potential gaps in the Act's pro-arbitration policy.

AT: States Racist**Federalist Policy making is Value Neutral—Can Obtain Any System of Values**

David Kopel and Glenn Reynolds, Research Director, Independence Institute and Professor of Law, University of Tennessee College of Law, "Taking Federalism Seriously: Lopez and the Partial-Birth Abortion Ban Act," Connecticut Law Review, Fall 1997 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=45301)

The VAWA, CSRA, and FACE cases, considered in conjunction with the Partial-Birth Abortion Ban Act, highlight one of the virtues of taking federalism seriously: it is value neutral. The judicial opinions that would strike down three of the recent legislative triumphs of feminism--FACE, CSRA, and VAWA--are precisely the opinions which would serve as the strongest authority for a legal challenge to a major legislative defeat of feminism--the enactment of the Partial-Birth Abortion Ban Act.

AT: States Racist**Court Rulings Prevent the Impact—States Can't Impose Racist Policies in the Name of Innovation**

Timothy Zick, Prof of Law, "Statehood as the new personhood: the discovery of fundamental 'states' rights" William and Mary Law Review, Oct 2004 (Lexis)

Perhaps it was not institutional incompetence or necessity that led the Garcia Court to purport to leave the federalism area, and that has led the Court more generally to avoid, at least until recently, an expansive rights regime for states. Perhaps, as Baker and Young contend, individual rights like abortion and sexual privacy are simply "normatively more attractive than states' rights." After all, the phrase "states' rights," for many, conjures a host of negative associations, including, for some, virulent racism. It is possible, therefore, that the Court, and many scholars as well, have been "read[ing] particular values out of the Constitution simply because popular opinion at a given point in history finds them normatively unattractive." This proposition cannot, of course, be tested empirically. There may indeed have been some residual judicial ill will toward "states' rights" due to its association with bad actors, both public and private, in our nation's past. It seems unlikely, however, that in 1985, when Garcia was decided, the Court rested its decision to curtail fundamental "states' rights" federalism on these sorts of negative associations. It probably gives too little credit to the Court, and to scholars, to suggest that modes of judicial enforcement or scholarly support are based primarily upon "changing normative preferences" or mere popularity. Even if one is not willing to give judges and scholars such credit, it is surely a stretch to paint the "states' rights" of National League of Cities with the same brush as the old "states' rights" of segregationists. The "states' rights" of what might be considered the modern era--freedom from federal wages and hours regulations, for example--are hardly the sort that invoke segregationist ghosts.

AT: Race to the Bottom**The Race to the Bottom Theory Does Not Manifest—Preserving State Authority Overwhelms Any Risk**

David Schoenbrod, professor of law at New York Law School, "Why States, Not EPA, Should Set Pollution Standards." CATO Institute, 2001 (<http://www.cato.org/pubs/regulation/reg19n4a.html>)

The race-to-the-bottom argument does not justify the continued national control of intrastate pollution. The argument focuses upon just one determinant of state environmental policy—the competition to attract employers—ignoring other determinants such as the competition to avoid pollution, which goes by the name NIMBY—that is, "not in my back yard." NIMBY is a race to the top. The national class deplores both race to the bottom and NIMBY. In one thing it is constant: people like themselves should shoulder the experts' burden of supplanting the decisions of the communities affected. Moreover, the logic of the race-to-the-bottom argument suggests that all aspects of state and local government that would tend to affect industrial location should be taken over by a government with broader jurisdiction and, in an increasingly global economy, that government should be international in scope. This is an argument for the nascent "international class." Even if enough scholars could torture economic models long enough to produce some set of assumptions under which there would be a tendency towards a race to the bottom, it is implausible that its impact would be sufficient to offset the benefits of getting rid of the federal chain of command.

AT: States Spending**State Regulations are More Cost Effective, Better Able to Focus on Specific Issues**

Jonathan Adler, Professor of Law and Co-Director, Center for Business Law and Regulation, Case Western Reserve University School of Law, "WHEN IS TWO A CROWD? THE IMPACT OF FEDERAL ACTION ON STATE ENVIRONMENTAL REGULATION", Harvard Environmental Law Review, 2007 (Lexis)

There are several factors that may cause state-level environmental regulations to be more cost-effective, or otherwise qualitatively superior, than federal regulations of equivalent cost or scope. [n144](#) First, and perhaps most important, state policy-makers and regulators may have access to [*107] knowledge of local problems and conditions. [n145](#) Consideration of such knowledge in the development and implementation of state regulatory programs may increase the protectiveness of existing programs without increasing their cost or scope. Second, state policy-makers, because they are closer both to the environmental problems they seek to address and the regulated community, may be more responsive to local needs and concerns. Third, insofar as environmental problems vary from place to place, state policy-makers may be able to focus state resources on environmental problems that exist in a given state. Federal standards, on the other hand, tend to impose broad one-size-fits-all requirements that, in actuality, often fit no state particularly well. [n146](#) A regulatory requirement that makes perfect sense in one state may not provide much environmental protection in another. Fourth, the existence of a federal standard may inhibit the ability of (or incentive for) state policy-makers to innovate or experiment with different approaches to meeting a given environmental goal. [n147](#)

AT: Federal Action→ States Acting**The Opposite is True—Federal Actions Encourage the States to Abandon the Areas of Policy Making Regulated**

Jonathan Adler, Professor of Law and Co-Director, Center for Business Law and Regulation, Case Western Reserve University School of Law, "WHEN IS TWO A CROWD? THE IMPACT OF FEDERAL ACTION ON STATE ENVIRONMENTAL REGULATION", Harvard Environmental Law Review, 2007 (Lexis)

Just as federal action may indirectly encourage greater state regulatory activity, federal action may discourage state regulatory action. This can occur in at least two ways. First, the adoption of a federal regulatory standard may "signal" that more stringent state regulations are unnecessary. In effect, the federal standard may be seen as evidence that a given level of regulatory protection is sufficient to safeguard relevant public interests, and more stringent measures are unnecessary. As a result, the adoption of a federal regulation may induce state policy-makers to adopt comparable state protections. In addition, the adoption of a federal regulation may crowd out state regulatory measures by reducing the net benefits of additional state measures. As a result, the existence of federal regulation may discourage the adoption of additional state-level regulatory protections in the future. The potential for federal regulatory measures to reduce the level of state regulatory activity is significant because it challenges the prevailing assumption that the adoption of a federal regulatory standard raises, or at least maintains, the aggregate level of protection nationwide. [n116](#) Many environmental analysts, for example, suggest that the federal government should adopt a regulatory floor, but allow states to implement federal standards and adopt more stringent measures of their own. [n117](#) The general belief is that this will maximize the extent of environmental protection. Yet if the adoption of federal regulatory standards can induce states to adopt less protective environmental measures than they would otherwise have adopted, the net benefits of a federal floor will be less than traditionally assumed, and in some states it will actually result in a net reduction in the aggregate level of environmental protection. Indeed, it is possible that the net result of a federal regulatory floor, over time, could be the maintenance of lower levels of environmental protection than would otherwise have been adopted. Even if such effects are unlikely, federal policy-makers should consider these possibilities when assessing the likely costs and benefits of federal action.

AT: Congress Rolls Back**Its Empirically Denied—Congress Does Not Roll Back State Actions Even on Areas of Federal Authority**

Jack Goldsmith, Associate Prof of Law at University of Chicago, ARTICLE: "FEDERAL COURTS, FOREIGN AFFAIRS, AND FEDERALISM," Virginia Law Review, November 1997 (Lexis)

The rise in subnational foreign relations activity tells us little, of course, about the activity's normative desirability. But we should also avoid the automatic assumption that this development is normatively undesirable. This is especially true because the federal political branches have made clear that, in contrast to traditional foreign relations activities which largely have been federalized through statute and treaty, they do not always, or even usually, prefer federal regulation of these new foreign relations issues. The recent increase in state and local involvement in such issues "has occasioned little reaction from Congress or the Executive." [232](#) And when the political branches do react, they often choose to protect state interests over foreign relations interests when the two appear to clash. A good example is the United States' recent ratification of a variety of international human rights treaties. [233](#) These treaties create numerous potential [*1675] conflicts with state law. [234](#) In the face of international pressure, the President and Senate have consistently attached reservations, understandings, and declarations to these treaties to ensure that they do not preempt or affect inconsistent state law. [235](#) Similarly, California's worldwide unitary tax on multinational corporations has provoked enormous diplomatic controversy with our closest trading partners since the 1980s. [236](#) The President negotiated a treaty that would have preempted this law, but the Senate withheld its consent. [237](#) And in the face of substantial pressure from foreign governments, Congress consistently failed to enact legislation preempting the unitary tax. [238](#)

Federalism—Ux**The Climate is Shifting Back to State Control Now—Concern For Federalism is Rising Along With the Need for Changing Transportation Infrastructure**

Robert Jay Dilger, Senior Specialist in American National Government, "Federalism Issues in Surface Transportation Policy: Past and Present," Congressional Research Service, January 5th, 2011

(<http://www.fas.org/sqp/crs/misc/R40431.pdf>)

American federalism, which shapes the roles, responsibilities, and interactions among and between the federal government, the states, and local governments, is continuously evolving, adapting to changes in American society and American political institutions. The nature of federalism relationships in surface transportation policy has also evolved over time, with the federal government's role becoming increasingly influential, especially since the Federal-Aid to Highway Act of 1956 which authorized the interstate highway system. In recent years, state and local government officials, through their public interest groups (especially the National Governors Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, and American Association of State Highway and Transportation Officials) have lobbied for increased federal assistance for surface transportation grants and increased flexibility in the use of those funds. They contend that they are better able to identify surface transportation needs in their states than federal officials and are capable of administering federal grant funds with relatively minimal federal oversight. They also argue that states have a long history of learning from one another. In their view, providing states flexibility in the use of federal funds results in better surface transportation policy because it enables states to experiment with innovative solutions to surface transportation problems and then share their experiences with other states. Others argue that the federal government has a responsibility to ensure that federal funds are used in the most efficient and effective manner possible to promote the national interest in expanding national economic growth and protecting the environment. In their view, providing states increased flexibility in the use of federal funds diminishes the federal government's ability to ensure that national needs are met. Still others have argued for a fundamental restructuring of federal and state government responsibilities in surface transportation policy, with some responsibilities devolved to states and others remaining with the federal government. Congressional attention to federalism issues in surface transportation policy tends to increase during reauthorizations of the federal highway and mass transit program. The current highway and mass transit program, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA; P.L. 109-59), after being extended several times, is set to expire on March 4, 2011. Its reauthorization generated considerable legislative activity during the 111th Congress. Issues addressed by Congress include SAFETEA's funding level and financing, especially proposals addressing the Highway Trust Fund's fiscal sustainability, state funding guarantees, and congressional earmarks.

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American Federalism and Separation of Powers Remains Strong—Their Uniqueness Arguments are Liberal Clap-Trap About Governmental Failures

National Review Online, Bench Memos Legal Blog, [“Imbecility” or Limited Government?](http://www.nationalreview.com/bench-memos/301351/imbecility-or-limited-government-matthew-j-franck) May 30th, 2012
(<http://www.nationalreview.com/bench-memos/301351/imbecility-or-limited-government-matthew-j-franck>)

Yeah, yeah, it's just the quickie newspaper version of the book's argument. But who are these "critics across the spectrum" who say that our political system is "dysfunctional, even pathological"? When a liberal says our government is "dysfunctional," what he invariably means is that it does not vigorously churn out the sorts of egalitarian, freedom-destroying legislation that will propel us (even more quickly) in the direction Europe has already traveled. When conservatives contemplate what a liberal means by "functional," we say "bring on the dysfunction, baby!" The American system's separation of powers, checks and balances, bicameralism, federalism, and pluralism routinely result in the government's utter failure to get anything done. Thank goodness. While there are important things that need doing, nearly all of them fall in the category of "undoings"—undoing the achievements of all that "functional" government liberals love, which have made us less wealthy and less free.

All the telltale signs are there that Sandy wants the standard-issue liberal results of "functional" government. He hates "gridlock," for instance, one of the great blessings to liberty. But I'll grant him the credit—if that's the word I want—for thinking farther outside the box than most of his confreres. He would like, for one thing to "permit each newly elected president to appoint 50 members of the House and 10 members of the Senate, all to serve four-year terms until the next presidential election." This could be a candidate for worst constitutional idea of the decade, but Sandy is spry, and may come up with something worse before 2020.

There are apparent tensions within Sandy's ideas this time around. While he praises "direct democracy" and thinks we should have more of it, and also likes how much easier it is to amend [state constitutions](#) than the federal constitution, he betrays a bit of uneasiness when he mentions the idea of "constitutional amendment at the ballot box." California has been a pioneer in this respect, but Sandy calls it "the only state with a constitution more dysfunctional than that of the United State." I might agree with him, but I doubt we'd have the same reason. Could it be that he is thinking of California and the other 31 states where popular majorities have protected marriage by amending constitutions? In any event, while it's important to consider how difficult to make an amendment process, the business of constitution-making and amending is the clearest case of all for direct reference to the people's will. That's why the Constitution was referred to specially elected ratifying conventions, a process that Article V still permits as an alternative to [state legislatures](#) (and which has been used once for a federal constitutional amendment).

Federalism—Ux**Federalism Will Become Stronger and More Decentralized—Direct Democracy and Social Media Prove**

John Parisella, invited professor at University of Montréal's International Relations Center, "Howard Dean and Emerging Federalism," Americas Quarterly, May 17th, 2012 (<http://www.americasquarterly.org/node/3639>)

To be fair, his address was meant to be instructive, not to provoke shockwaves. He lauded Canadian federalism, explained the evolution of American federalism since World War II and showed how the system of federalism is best suited to dealing with diversity and competing interests within a state. This being said, he argued that today's generation is no longer limited by the traditional structures of federalism. Rather, today's social media gives them a greater say, a more direct voice and a greater capacity to affect change beyond constitutional jurisdictions.

Using examples such as Bank of America debit card fees and the reaction of cardholders, events in Egypt during the Arab spring and the collapse of the intellectual property bill in the Senate following a campaign by web users, he made the case that people today will no longer use the old ways because they no longer believe in them. He may have a point as polls consistently give Congress a 90 percent disapproval rate.

When it came to Canadian federalism, a subject of interest to his Montréal audience, Governor Dean ventured on controversial terrain: Québec separatism. He, in effect, declared that it was less needed because of the empowerment social media gives individuals. I too subscribe to the notion that social media has transformed the way French-speaking Quebecers relate to the outside world, and how the English language is seen as a vehicle to this outside world and not a tool of an oppressive linguistic group.

His conclusion was that federalism will become more decentralized, not as much by Supreme Court rulings or constitutional amendments, but by more direct democracy facilitated by social media. It may be early to draw conclusions on the future of U.S. and Canadian federalism as he cautioned, but Governor Dean, who has been a trend setter throughout his career, may actually be on to something.

Federalism—Ux**Invalidation of DOMA Strengthens Federalism**

Susan E. Stenger, partner at the Boston law firm of Burns & Levinson LLP, “What does the DOMA ruling mean?” Boston Globe, May 31st, 2012 (<http://bostonglobe.com/opinion/2012/05/31/what-does-doma-ruling-mean/0lQrF9S6pTZ7hd5wM14mQL/story.html>)

The court also stated that the federalism concerns involving the right of states to legalize same-sex marriage, while they may not be sufficient on their own to invalidate DOMA, play a unique role here in the reinforcing the equal protection concerns. “One virtue of federalism is that it permits this diversity of governance based on local choice, but this applies as well to the states that have chosen to legalize same-sex marriage.” (Opinion, p. 30). Massachusetts and New Hampshire within the First Circuit (which also includes Rhode Island, Maine, and Puerto Rico) have legalized same-sex marriage. Today’s decision is a large step toward equal rights for same sex marriage, building on recent momentum created by President Obama’s endorsement of same sex marriage, and the decision of the US Court of Appeals for the Ninth Circuit in February of this year ruling that California’s Prop 8 ban on same sex marriage was unconstitutional. Of the three judges who made this unanimous ruling, two had been appointed by Republican presidents.

Federalism—Ux (Transportation Infrastructure)**Federal Role in Transportation Infrastructure is Limited Now Due to Federalist Concerns**

William D. Duncombe and Yilin Hou, Center for Policy Research at The Maxwell School and Department of Public Administration and Policy School of Public and International Affairs, University of Georgia, "SUBSTANTIATION OF TRANSPORTATION INFRASTRUCTURE – Patterns of Governance and Public Finance in Development: An Analytical Comparison of the United States and China," Indian Institute of Management-Bangalore (IIMB), January 21-23, 2011 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744123)

There is little doubt that growth in transportation infrastructure and economic growth were strongly linked in the U.S. over the last two centuries. All three levels of government have played an important role in shaping the expansion of transportation systems. Three key elements characterize the transportation infrastructure investment process in the U.S. First, there has been a lack of federal and state government infrastructure planning linked to economic development planning. The planning that has occurred, such as the emergence of highway planning in the last century, tends to be focused more narrowly on one transportation mode. Second, the federal government has had to take a more limited role in the expansion of infrastructure because of concerns about unconstitutional expansion of federal power. Instead, the federal government has tended to influence infrastructure decisions through the use of federal grants and regulations of specific transportation modes. Third, the financing of infrastructure has often evolved in a haphazard fashion which resulted in significant inefficiencies and waste. Differences in financing mechanisms by mode of transportation has created price distortions which has lead to inefficient allocation of government resources. In particular, several recent reports have highlighted the underinvestment in railroads relative to highways because of the differences in financing mechanisms (Transportation Research Board 2009; National Surface Transportation Policy and Revenue Study Commission 2007).

Federalism—Links: Transportation Infrastructure**Lack of Federal Mandates is Crucial to Maintain the Authority and Flexibility of State Governments**

National Conference of State Legislatures, "SURFACE TRANSPORTATION FEDERALISM POLICY STATEMENT," 2011 (<http://www.ncsl.org/documents/transportation/SurfTransFederalism.pdf>)

The federal government plays a vital role in supporting a national surface transportation system that meets national defense needs, addresses fairly and equally the mobility needs of all Americans and facilitates interstate commerce. NCSL supports the continuation and preservation of a federal-aid surface transportation program. The federal program should direct spending to national priorities while allowing for state and insular area flexibility in local and regional variations. It is also essential that the federal-aid surface transportation program incorporate requirements and foster goals of other national policies that impact transportation decision-making.

Recent federal reauthorizations have recognized the unique contributions of each transportation mode to the productivity of the states and the nation, and to the ability of this nation to compete globally in the emerging and existing international economies. These laws contemplate an integrated transportation system for the movement of both goods and people, with increased emphasis on adopting technologies that improve productivity. NCSL urges Congress to increase funding for federal-aid surface transportation programs and provide states enhanced programming flexibility and increased responsibility for meeting a multitude of national goals. The ability of states to maintain flexibility in decision making and comply with environmental and other mandates is dependent upon regulatory flexibility as well as adequate and reliable funding.

Federalism—Links: Transportation Funding**Congressional Action to Create Additional Transportation Funding Infringes on State Authority to Raise and Generate Funding Streams**

National Conference of State Legislatures, "SURFACE TRANSPORTATION FEDERALISM POLICY STATEMENT," 2011 (<http://www.ncsl.org/documents/transportation/SurfTransFederalism.pdf>)

In this vein, Congress should continue to encourage and expand incentive-based programs, such as the Urban Partnership Program, to spur local and regional transportation innovation in full coordination with state authorities and to promote the use of tolling, congestion pricing, public transit, telecommuting, real-time traffic and other advanced technologies, and other strategies in a comprehensive approach to achieve interstate mobility goals through urban congestion reduction. All funding and financing options must be available to state legislatures for state and federal-aid programs. All current federal restrictions on states' authority to toll should be removed so that states can optimize resources for capacity expansion, operations, and maintenance while ensuring free flow of goods and people. Tolling, value-pricing, and public-private partnerships (PPPs) should remain state provinces and are not appropriate federal funding mechanisms. Federal guidelines should be designed to accommodate private sector support. The level of private sector participation is best determined by state and local authorities, and private participation should not be a prerequisite for receiving federal funds. Statutory or regulatory barriers to state and locally granted revenues should be removed.

Federalism Impacts—Federalism Modeled Now

American Federalism is Modeled Now—Maintaining a Successful Division Here is Crucial to Global Federalist Governance

Robert A. Schapiro, Professor of Law, Emory University School of Law, "2007 RANDOLF W. THROWER SYMPOSIUM: THE NEW FEDERALISM: PLURAL GOVERNANCE IN A DECENTERED WORLD: ARTICLE & ESSAY: FEDERALISM AS INTERSYSTEMIC GOVERNANCE: LEGITIMACY IN A POST-WESTPHALIAN WORLD," Emory Law Journal, 2007, p. Lexis

Federalism is a widespread form of government throughout the world. Depending on the definition one employs, somewhere between forty percent and eighty percent of the world's population lives in a federal system.ⁿ¹ Federal systems involve layerings of legal regimes: Laws promulgated by the national government and by subnational units apply concurrently. The growth of transnational governance provides an additional layer of regulation. Transnational regimes may take the form of bilateral trade agreements or of comprehensive multilateral conventions with complex implementing bureaucratic structures, such as the European Union. The existence of multiple, overlapping legal regimes is a pervasive feature of contemporary society. A transaction in Mississippi may well fall within the regulatory domains of Mississippi, the United States, and the North American Free Trade Agreement.ⁿ²

Understanding the place of American federalism within this global realm of layered governance presents complicated questions. From one perspective, constitutional federalism in the United States provides an obstacle to [*116] transnational governing regimes. International agreements, and their resulting obligations, tend to result from the actions of the national government. To the extent that these international conventions impose restrictions on conduct within the United States, the agreements may interfere with the prerogative of the states. Globalization may be the enemy of federalism. A functional understanding of federalism in the United States, on the other hand, can connect federalism within the United States to these larger global trends. Common issues may arise in all systems of layered governance, whether federalism in one country or multilateral trade agreements. Overlapping regulations may provide certain general benefits, while also threatening to undermine other important values. A global perspective fosters learning about the systemic features of layers of governance. Utilizing a functional understanding of federalism within the United States, this Essay seeks to draw lessons from the international context. I focus in particular on issues of democratic legitimacy. Popular sovereignty provides the primary source of legitimacy for contemporary liberal democracies, such as the United States.ⁿ³ Ultimately, government must be of the people, as well as by the people and for the people. If the nation meets the prerequisites for democratic rule, then the laws that it promulgates enjoy a democratic imprimatur: taxation (and other regulation) only with representation. Laws that states or other subnational units impose on their own citizens enjoy a similarly strong democratic pedigree.

Federalism Impacts—Key to Democracy

Proximity of State Institutions Makes Federalism Crucial to Democracy

Barry Friedman, MINNESOTA LAW REVIEW, v. 82, December 1997, p. 317

States, and their substate local governments, are closer to the people and provide an opportunity for greater citizen involvement in the functional process of self-government. n304 We have a system of democracy, one that welcomes and privileges the voice of the people. The founders may not have intended it, <=306> n305 but as the system evolved, the franchise consistently was expanded. When we despair of the operations of our national government, we tend to criticize special-interest influence and bemoan the apathy and lack of participation of average citizens. Although the distinction between ordinary citizens and special interests may well be overstated, state and local government does provide many more avenues for citizen participation than does the national government. Rubin and Feeley, among others, doubt that states will serve the function of promoting democracy, but in doing so they repeat the two baseline errors discussed above. They argue that states are unnecessary to preserve democracy (just as they argue that the Guarantee Clause is unnecessary today), because democracy is so ingrained that it will not be disturbed. But states also are embedded deeply in the system we enjoy today, and it is possible that the two - states and democracy - have become ingrained together such that eliminating the autonomy of states would weaken our democracy. Indeed, intuition suggests that disenchantment with government and anemic levels of citizen participation in democracy positively correlate with nationalizing trends. Second, Rubin and Feeley argue (somewhat in tension with their first point) that local participation by definition occurs locally, not at the state level. This may or may not be the case, and likely varies from state to state. But even if so, again, under the system that we have local governments are creatures of and fostered by the state governments. Intuition suggests that more people would and could participate in smaller levels of government, and common experience seems to bear this out. Some commentators look primarily to [*391] electoral turnout and argue to the contrary, pointing out that important national elections rouse far more interest than elections for state and local offices. But a single-minded focus on voter turnout misses the point that participation can and should stretch well beyond electoral participation. The fact is that many Americans can call their state and local officials on the phone - and do - and have those phone calls returned by the actual officeholder, not a staffer tallying opinions in a polite voice. The fact is that countless citizens attend city council and state legislative sessions, watching to see some matter of interest resolved. The fact is that interest groups at the state and local level all tend to be more grass roots, less mechanized, and more responsive to the efforts of concerned individuals. There is work to be done to test these assertions, but they are easily observable in many states and communities. Moreover, state and local governments appear to serve as breeding grounds for democracy. They provide a way for many people interested in public service to step on to the ladder in a manageable way. National office has become frightfully and frighteningly expensive. It does not matter how many of these officials actually make it to (or even vie to get to) the "top" of the ladder, the part of the ladder that academics [*392] seem to be watching. For democracy to function it may matter only that someone starts as a city council member and ends up in the state legislature. Numerous other citizens serve on local and state boards and commissions, school boards, or even the PTA.

Federalism Impacts—Key to Liberty**Federalist Balance of Power is Key to Preserve Liberty and Personal Rights**

John Yoo, Professor, Law, UC-Berkeley, "What Became of Federalism?" LOS ANGELES TIMES, June 21, 2005, p. lexis

Federalism bestows a third benefit. The framers sought to create a competition between the states and Washington to prevent government from trampling on individual liberty.

Because of federalism and a separation of powers, James Madison wrote in the Federalist Papers, "a double security arises to the rights of the people. The different governments" -- state and federal -- "will control each other; at the same time that each will be controlled by itself."

Early in his presidency, Bush pledged to "make respect for federalism a priority in this administration," and he affirmed the founders' belief that "our freedom is best preserved when power is disbursed."

Now he should give the Supreme Court an example to follow by heeding his own words, remaining humble about the abilities of Washington to cure social problems and appointing federal judges who understand the importance of states.

Federalism Impacts—Environment**Global Federalism Can Solve Problems of Disparity, Resources and Sustainability, Progressing on Social Causes and Environmental Issues**

Bruno Giussani, 2004 Knight Fellow at [Stanford University](#), "[Global Federalism: What if the Big Cities Start Acting on Global Problems?](#)" Huffington Post, September 13th, 2006 (http://www.huffingtonpost.com/bruno-giussani/global-federalism-what-i_b_29322.html)

So, instead of taking the problems to a broader stage, what about taking them to a narrower one: that of the city? What if the big cities of the world started developing projects and agreements among themselves to solve some of the world's problems? "The big cities have today a strategic role in the global context", she said the other day to the Science and Technology in Society conference in Kyoto, Japan (according to [a report](#) in the Italian daily Corriere della Sera). "They should start assuming some foreign policy rights and responsibilities".

Let's call it "global federalism", she suggests, as in the opposite of "global government": "Many countries have not signed the Kyoto protocol because at a national level it's often too difficult to commit to such engaging policies. But we could start experimenting with smaller-scale global agreements - among cities or regions". The idea is that big cities and regions, more than nations and international institutions, can be the engine of problem-solving on a global scale.

Last year, if I remember correctly, 150 or so US cities including Seattle and San Francisco, annoyed by the Bush administration's opposition to the Kyoto treaty, signed an agreement to move in the direction of the greenhouse-gas reductions stipulated in that treaty. And more recently, California governor Arnold Schwarzenegger has set similar limits on greenhouse-gases. So the idea is not new. But Moratti has maybe found the term that may make it stick - global federalism - and that can give a sort of theoretical underpinning to the idea that, if cities start acting as global actors towards sustainability, new mobility solutions and traffic strategies, clean energy, water resources management, etc, when you add it all up there could be significant progress even without national policies and international treaties.

Federalism Impacts—Solves War**Federalism Makes Warfighting Less Likely and Checks Militaristic or Adventurist Tendencies**

Scott A. Silverstone, Assistant Professor, Political Science, Williams College, Federal Democratic Peace: Domestic Institutions, International Conflict, and American Foreign Policy, 1807-1860, September 1, 2000, www.isanet.org/archive/silverstone.html

Jay and Madison clearly describe the logic of institutional constraints on military force in terms of federal asymmetry.[44] The key to reigning in the aggressive potential of republican government was the territorially-distributed diversity of political perspectives and interests within the Union that could be counted on to oppose one another at the center of decision-making in the federal government. In Federalist No. 37, Madison observes asymmetry in the "circumstances" of different territorial communities at all levels of the compound republic. "As every State may be divided into different districts...which give birth to contending interests and local jealousies, so the different parts of the United States are distinguished from each other by a variety of circumstances, which produce a like effect on a larger scale." [45] Territorial representatives are expected to carry the "local spirit" of federal asymmetry into the national legislature.[46] Jay notes that the contending interests and local jealousies that emerge from this asymmetry will have a direct effect on how the different parts of the Union perceive the outside world and act on their particular external interests through national policy. For example, he asserts that "the temptations to violate treaties and commit international injustices may result from circumstances peculiar to the State[s]...such violences are more frequently occasioned by the passions and interests of a part than of the whole, of one or two States than of the Union." [47] Federal asymmetry also meant that different regions in the Union were expected to have different perspectives on the Union's relations with European powers that held colonial possessions in North America.

The neighborhood of Spanish and British territories, bordering on some States and not on others, naturally confines the causes of quarrel more immediately to the borderers. The bordering States...will be those who, under the impulse of sudden irritation, and a quick sense of apparent interest or injury, will be most likely, by direct violence, to execute war with those nations.[48]

While the authors of the Federalist recognized the potential for external aggression that federal asymmetry may produce, they also argue that the diversity among territorial communities would tend to constrain regional aggression. Jay argues forcefully, "nothing can so effectually obviate that danger [of regional aggression] as a national government, whose wisdom and prudence will not be diminished by the passions which actuate the parties immediately interested." [49] In other words, "the national government, not being affected by these local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent or punish its commission by others." [50] This explanation for why constraints on war might emerge from the legislature goes beyond the simple assumption that legislatures are more deliberative bodies by nature, and therefore more likely to decide against war as an irrational or imprudent act. Diversity among members of Congress increases the likelihood of divergent views and intense competition over questions related to the use of military force.

Federalism Impacts—Solves Ethnic War**Only Federalist Systems Can Check Ethnic and Secessionist Warfare**

Larry Diamond, Senior Fellow, Hoover Institution, THE GLOBAL RESURGENCE OF DEMOCRACY, 1996 (p.25)

There are four principle mechanisms for managing ethnicity politically within a democratic framework: federalism, proportionality in the distribution of resources and power, minority rights (to cultural integrity and protection against discrimination), and sharing or rotation of power, in particular through coalition arrangements at the center. As the experience of India and Nigeria demonstrate, and as Donald Horowitz has noted, federal systems are particularly effective in managing ethnic tension because they utilize a variety of mechanisms for reducing conflict. First, they disperse conflict by transferring much of it to state and local levels. They also generate intraethnic conflict, pitting different factions of ethnic groups against one another in the struggle for control of state and local governments. Third, they may induce interethnic cooperation as states find the need to coalesce with one another in shifting ways depending on the issue at the center. Fourth, they may generate crosscutting cleavages if some ethnic groups are split into different states, with different interests, advantages and needs. Fifth, they can reduce disparities by enabling backward and minority peoples to rise within their own state bureaucracies and educational systems. More generally, federal systems give all major territorially based ethnic groups some control over their own affairs, and some chance to gain power and control resources at multiple levels. This points another virtual law: the impossibility of stable democracy where ethnic cleavages are deep and power is heavily centralized. There are compelling independent reasons why decentralization of power and strong local and state government promote the vitality of democracy, but these are especially striking imperatives in divided societies.

Federalism Impacts—Modeled**American Federalism is Modeled Worldwide**

John McCain, U.S. Senator, “Sen. McCain Issues Statement on Marriage Protection Amendment,” US FED NEWS, June 6, 2006, p. lexis

The proposed amendment would establish in our Constitution a permanent resolution of a debate that is currently and properly being resolved in different ways, in fifty different states, by the people's elected representatives. Our system of federalism is not easily separable from our commitment to republican government, because it is driven by the idea that we are best governed when those who represent us live where we live, and share the values that we share. It is this understanding that has allowed us the strength, as a nation, to time and again preserve our unity and confront our challenges in times of crisis, no matter how great our differences on issues that are the subject of heated public debate. The continued vitality of America's commitment to federalism and republican government offers a hopeful example to strife-torn areas of our world where conflicts are tragically settled with bullets rather than ballots. The Constitutional value of federalism is doubly important in the area of family law, because power to legislate in this area has traditionally been reserved to the states, and because issues of family structure affect the fabric of the broader community, creating the opportunity for approaches that reflect the values of the states that form our nation.

Federalism Impacts—Modeled By Russia**Russian Federalism is Influenced By American Federalist Procedure**

Marjorie Mandelstam Balzer, Georgetown University, Testimony before Senate Foreign Relations Committee, FEDERAL DOCUMENT CLEARING HOUSE CONGRESSIONAL TESTIMONY, July 18, 2001, p.lexis

What can the U.S. do to encourage Russia to practice what President Putin preaches about mixtures of peoples living harmoniously? We can only influence on the margins, but we do have some leverage. While Russians are understandably averse to being lectured by Americans, we can encourage more civic and less nationalist, chauvinist behavior on the part of central and regional authorities by investing directly in those regions and republics where relatively greater efforts are made at civil society.

Federalism Impacts—Russia Federalist Now**Putin is Making Federalist Decentralization a Priority Now**

Commerce Canada, "Political Environment," July 26th, 2007

([http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vDownload/CCG_0334/\\$file/X_4557015.DOC](http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vDownload/CCG_0334/$file/X_4557015.DOC))

As outlined in the Russian Constitution adopted in December 1993, Russia has a federal system. The Russian Federation is composed of 89 subjects, which include regions, autonomous republics, territories, and the cities of Moscow and St. Petersburg. These subjects are granted some authority over internal economic and political issues. Putin has made reforming Russian federalism a priority. His government has renegotiated several power-sharing agreements made with Federation subjects by the 1990s Yeltsin government. In May 2000, Putin issued a decree dividing the country into seven federal districts. At his initiative, the Federal Assembly passed legislation making regional leaders subject to removal from office for failing to comply with federal law or the Constitution. In July 2003, Putin signed into law legislation delineating the powers and responsibilities of the different levels of government. Legislation to ensure that these responsibilities are fully funded remains under Duma consideration. These and other initiatives were designed to strengthen the power of the center and to rein in regional leaders, some of whom have exercised almost unlimited authority in their own realms.

Federalism Impacts—Russian Federalism Key to Nationalism

Federalism is Critical to Prevent Russian Separatism and Nationalist Violence

Alexander Dugin, political scientist, "Russia's Future: A Unitary State or an Ethno-Federation?" *Rossia* n. 4, WHAT THE PAPERS SAY PART A (Russia), February 3, 2006, p. lexis

In the present situation, regions and territories in the composition of the Russian Federation are a threat of separatism indeed. The sense of the European federalism is not in the unitary structure, but in transaction from the present model, when an oblast is a subject of the federation etc. In this connection, the appointing of governors, of course, belittles the territorial principle of the Russian Federation and could be treated, on the one hand, as a step towards the unitary state; on the other hand - from the viewpoint of ethno-federalism - it is not so bad since in this case we prevent a possible threat of separatism.

Explosion of Russian Nationalism Risks Dangerous Nuclear Warfare

Victor Israelyn, long-time Soviet Ambassador, "Russia at the Crossroads: Don't Tease a Wounded Bear," *THE WASHINGTON QUARTERLY* v. 21 n. 1, Winter 1998, p. lexis

THE POWER SCENARIO

The first and by far most dangerous possibility is what I call the power scenario. Supporters of this option would, in the name of a "united and undivided Russia," radically change domestic and foreign policies. Many would seek to revive a dictatorship and take urgent military steps to mobilize the people against the outside "enemy." Such steps would include Russia's denunciation of the commitment to no-first-use of nuclear weapons; suspension of the Strategic Arms Reduction Treaty (START) I and refusal to ratify both START II and the Chemical Weapons Convention; denunciation of the Biological Weapons Convention; and reinstatement of a full-scale armed force, including the acquisition of additional intercontinental ballistic missiles with multiple warheads, as well as medium- and short-range missiles such as the SS-20. Some of these measures will demand substantial financing, whereas others, such as the denunciation and refusal to ratify arms control treaties, would, according to proponents, save money by alleviating the obligations of those agreements.

In this scenario, Russia's military planners would shift Western countries from the category of strategic partners to the category of countries representing a threat to national security. This will revive the strategy of nuclear deterrence -- and indeed, realizing its unfavorable odds against the expanded NATO, Russia will place new emphasis on the first-use of nuclear weapons, a trend that is underway already.

The power scenario envisages a hard-line policy toward the CIS countries, and in such circumstances the problem of the Russian diaspora in those countries would be greatly magnified. Moscow would use all the means at its disposal, including economic sanctions and political ultimatums, to ensure the rights of ethnic Russians in CIS countries as well as to have an influence on other issues. Of those means, even the use of direct military force in places like the Baltics cannot be ruled out. Some will object that this scenario is implausible because no potential dictator exists in Russia who could carry out this strategy. I am not so sure. Some Duma members -- such as Victor Antipov, Sergei Baburin, Vladimir Zhirinovskiy, and Albert Makashov, who are leading politicians in ultranationalistic parties and fractions in the parliament -- are ready to follow this path to save a "united Russia." Baburin's "Anti-NATO" deputy group boasts a membership of more than 240 Duma members. One cannot help but remember that when Weimar Germany was isolated, exhausted, and humiliated as a result of World War I and the Versailles Treaty, Adolf Hitler took it upon himself to "save" his country. It took the former corporal only a few years to plunge the world into a second world war that cost humanity more than 50 million lives.

I do not believe that Russia has the economic strength to implement such a scenario successfully, but then again, Germany's economic situation in the 1920s was hardly that strong either. Thus, I am afraid that economics will not deter the power scenario's would-be authors from attempting it. Baburin, for example, warned that any political leader who would "dare to encroach upon Russia" would be decisively repulsed by the Russian Federation "by all measures on heaven and earth up to the use of nuclear weapons." n10 In autumn 1996 Oleg Grynevsky, Russian ambassador to Sweden and former Soviet arms control negotiator, while saying that NATO expansion increases the risk of nuclear war, reminded his Western listeners that Russia has enough missiles to destroy both the United States and Europe. n11 Former Russian minister of defense Igor Rodionov warned several times that Russia's vast nuclear arsenal could become uncontrollable. In this context, one should keep in mind that, despite dramatically reduced nuclear arsenals -- and tensions -- Russia and the United States remain poised to launch their missiles in minutes. I cannot but agree with Anatol Lieven, who wrote, "It may be, therefore, that with all the new Russian order's many problems and weaknesses, it will for a long time be able to stumble on, until we all fall down together." n12

Aff—States Spending Trades-Off**Federal Funding Allows States to Preserve Funding For Other Programs—The Counterplan Would Directly Trade-Off With States Ability to Pay for Services**

Robert Jay Dilger, Senior Specialist in American National Government, "Federalism Issues in Surface Transportation Policy: Past and Present," Congressional Research Service, January 5th, 2011

(<http://www.fas.org/sqp/crs/misc/R40431.pdf>)

Because state budgets are fungible and nominal state revenue tends to increase over time, when states receive federal financial assistance they typically have several budgetary options. They can choose to not make any budgetary adjustments other than to supplement existing spending levels with the federal assistance, or they can choose to substitute all or a portion of the federal funds received for existing state funds and use the savings to spend in other areas, reduce taxes, or increase their state "rainy day" funds. An examination of grants-in-aid listed in the Catalog of Federal Domestic Assistance revealed that 33 federal grants to state and local governments have state spending MOE requirements to prevent states from substituting federal funds for existing state funds. An analysis completed by the Government Accountability Office in 2004 found that "state and local governments have used roughly half of the increases in federal highway grants since 1982 to substitute for funding they would otherwise have spent from their own resources. In addition, our model estimated that the rate of grant substitution increased significantly over the past two decades, rising from about 18 cents on the dollar during the early 1980s to roughly 60 cents on the dollar during the 1990s."¹¹¹

Aff—States Spending Trades-Off**State Funding For Transportation Infrastructure Explicitly Trades Off With Health Care, Education and Other Important Spending—Only Federal Increases Solve**

Sandra Scofield, Director of the Nebraska Rural Initiative, "A Crash Course in Infrastructure: Expensive but Essential Components for Rural (and Urban) Nebraska's Future," Rural Initiative Publications, September 17th, 2008 (<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1001&context=ruralinitiativepubs>)

Funding for roads in Nebraska has traditionally come from the Nebraska gas tax and motor vehicle taxes supplemented by federal funds. It's about a 50-50 mix. The use of funds from the Cash Reserve Fund in this year's legislative session is the first time we've allocated general funds (money from sales and income taxes) to roads. This is because we and all other states are concerned about changes in federal highway funds. The state highway construction program was \$390 million in FY 2006, \$350 million in FY 2007, and \$341 in FY2008. The FY 2009 program is published at \$317 million. The Nebraska Department of Roads is cautiously optimistic that additional federal funding could boost the program back up to \$380 million, but that would still leave us below where we've been at a time when costs are increasing. Also, high-priced gasoline has reduced the amount of driving we are all doing, and that results in a drop in revenue both to the federal Highway Trust Fund as well as our own state roads coffers. Our legislators are to be commended for stepping up in the 2008 session and addressing this issue. They know there is more to be done because the costs of transportation infrastructure are so expensive they cannot be maintained without adequate federal funds. Dipping into state general funds competes with other demands such as Medicaid. Medicaid pays for healthcare for the poor, who are primarily children and low income elderly-- most of whom are in nursing homes. K-20 education, prisons, law enforcement, and justice systems are a few other essential but expensive state responsibilities that squeeze a limited budget. We're going to need to find more long-range solutions unless the federal government further increases funding for highways. That may be a possibility given the concerns about the bridge collapse in Minnesota and the fact that people campaigning for office at the national level are talking about the importance of infrastructure, but rural areas need to make themselves heard in these debates to insure we aren't forgotten in the rush to address urban needs.

Aff—Federal Government Solves Better

Central Role to Manage and Fund Infrastructure is Crucial to Widespread Success— Empirically, Both the US and China Prove

William D. Duncombe and Yilin Hou, Center for Policy Research at The Maxwell School and Department of Public Administration and Policy School of Public and International Affairs, University of Georgia, "SUBSTANTIATION OF TRANSPORTATION INFRASTRUCTURE – Patterns of Governance and Public Finance in Development: An Analytical Comparison of the United States and China," Indian Institute of Management-Bangalore (IIMB), January 21-23, 2011 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744123)

This paper has used the substantiation of transportation infrastructure to explore patterns of governance and public finance in development. We have developed an analytical framework for this purpose. The modern human society since the Industrial Revolution has created increasing demands for government involvement to solve issues that the market mechanisms alone cannot. As a trend, the government role in promoting socio-economic progress has expanded, which is true regardless of the political or state system of a sovereign nation. Infrastructure as the basis for economic development and productivity growth in particular requires an active role of government at all levels for coordination, policy orientation or simply put, planning. A key challenge in large countries is finding mechanisms for solving information asymmetry problems between the central government and subnational governments. Solving the information problem requires balancing central planning with decentralized implementation, thus incentivizing central, sub-central and local governments. Given the public goods element of most transportation infrastructure, financing of transportation facilities is best to be mainly from central government grants to subnational governments. A strong central government role in financing infrastructure assures that the spillover benefits (and costs) across subnational boundaries can be taken into account. In addition, central government grants can be distributed in a way to reduce horizontal inequities in fiscal capacity and expenditure needs across regions of the country. However, central government grants should be supplemented with sub-central and local revenues derived from benefit taxes and fees to provide incentives for subnational governments to efficiently construct and maintain the transportation infrastructure.

The United States over the last 150 years has developed the world's most advanced transportation infrastructure, which played a very large role in promoting the country's economic development (Fishlow 2000). China's achievements in the 1950s and especially in the past 30

years in rapidly expanding its transportation infrastructure and accelerating the switch between transportation modes has have also been remarkable. America takes great pride in its free hand on the market forces; China claims it has found the key to success — socialism with Chinese characteristics, □ that we identify as realistic central planning with decentralized implementation. The Chinese government plays a heavy role in macro economy, even after the country has transitioned deeply into the market economy system. In the west, central and sub-central governments are playing roles much larger than before in financing transportation infrastructure. Is planning among the universal policy tools? From the comparison of the United States and China that we have conducted in this paper using our analytical framework, we have found at least four general lessons that have not been adequately addressed in previous literature.

Aff—Federal Government Solves Better**Federal Leadership is Crucial to Solve the Aff—Only National Strength and Responsibility Can Allow State Efforts to Succeed**

[Bruce Katz](#), Vice President and Director, Metropolitan Policy Program, “Strengthening Our Infrastructure for a Sustainable Future,” Brookings Institution, February 22nd, 2009
(<http://www.brookings.edu/research/speeches/2009/02/22-infrastructure-katz>)

If we are going to achieve critical national objectives around economic competitiveness, environmental sustainability, and social equity in an era of fiscal constraints it will require a 21st century infrastructure vision.

Infrastructure will only be effective if states have a strong, and deliberate federal partner. But to do so, Washington will have to change the way it does business. Speed is going to be important but it is more important to get it done right.

In the short term – the immediate term – we need to make sure that the stimulus bill and economic recovery package telegraph new ways of doing business.

First and foremost, we need to make sure that the strong transparency and accountability provisions don't end once the recovery money is gone.

The White House's guidance to its infrastructure agencies directs them to develop plans to spend the recovery funds in ways that demonstrate federal leadership in sustainability, energy efficiency, and reducing environmental impact.

Folks, this is a major step forward and represents what may be considered an unnatural act between unconsenting adults – but it is a welcome change in how Washington thinks about infrastructure.

But we still need to go further and apply this level of accountability as a matter of course to the myriad federal agencies that construct, operate, maintain, and use infrastructure. We must answer the question: are we investing in the right things?

In the name of budget reform, we should aim for a thorough examination of the fiscal year 2011 budget in order to cull out the \$80 billion in federal infrastructure spending each year (apart from the recovery package) and set priorities. It is impossible to improve coordination without knowing precisely what we are spending.

Aff—Federal Government Solves Better**Federal Leadership is The Only Way to Manage Divergent State Interests—The Counterplan Functionally Leaves Infrastructure Up to Chance**

[James Corless](#), Campaign Director, Transportation for America, “Local Voters Need a Partner,” National Journal Transportation Blogs, May 23rd, 2012 (<http://transportation.nationaljournal.com/2012/05/not-waiting-for-the-feds.php?print=true&printcomment=2212918>)

Absent strong federal leadership, states, cities and local communities are indeed stepping out on their own, raising funds from innovative sources, and doing what they can to make it happen.

But left to shoulder the burden entirely alone, these communities' noble efforts won't be enough to meet the challenges we're facing. These communities are stepping forward, but in the hopes that the federal government will take the next step with them and support them along the way.

The role for the federal government in transportation is indeed changing, evolving from being the driving factor that it was during the interstate era to being more of a partner in helping localities meet their changing needs. And their needs are a national concern, because they bear on whether Americans have a safe, reliable way to get to work, and whether goods can get to market. No developed nation in the world leaves these matters of basic infrastructure entirely to chance.

But there seems little doubt that, for the foreseeable future, federal resources will be constrained, and that makes it more imperative than ever that we set goals for the investment, and measure progress toward those goals. That's why provisions to do that in the Senate's bipartisan transportation bill, MAP-21 bill are so important.

Aff—States Racist**Katrina Proves that Problematic Racial Politics of States Rights Discourse is Still the Basis of Invoking Federalism—Its Not an Anachronistic Concern**

Dara Strolovitch; Dorian Warren; Paul Frymer, Assistant professor of political science at the University of Minnesota, post-doctoral scholar at the University of Chicago and Associate professor of politics and legal studies at UC Santa Cruz, "Katrina's Political Roots and Divisions: Race, Class, and Federalism in American Politics," June 11th, 2006 (<http://understandingkatrina.ssrc.org/FrymerStrolovitchWarren/>)

It is important to recognize, however, that while states' rights arguments have been used historically to undergird southern racial and class inequalities, they have been invoked inconsistently. Like most political ideologies in American politics, states' rights is much less a fundamental and enduring principle than a political foil that has been deployed opportunistically by political elites to advance their interests and agenda. Southern conservatives have often invoked states' rights to resist federal intervention, but they have also been quick to disregard this principle when it has suited their needs, as they did earlier this year when asking Congress to overrule a state court that allowed the removal of Terri Schiavo's feeding tube. Such inconsistency has historical roots that make clear that southern invocations of the 10th Amendment have more to do with protecting their power than they do with concerns about states' rights. While many southern states endorsed the 10th Amendment during constitutional debates, they also supported the Commerce Clause and the Full Faith and Credit provisions of the Constitution—both strongly anti-state rights—in order to stop northern states from taxing their products that were made with slave labor, and as a way of legally demanding the return of slaves who escaped to northern free states.

Federalism then, may be a center of the debate, but it provides a smoke screen more than a concrete barrier to political reform. The reason federalism debates are so powerful is because our national political institutions are fundamentally divided over race, a division that is as old as the nation itself. To maintain racial hierarchies, southern Democrats and racial conservatives consistently invoke states rights when it suits them. These interests, while a minority in American society, have always been important pivots and veto players in the national political arena. Because our political institutions, such as the Senate, the Electoral College, and the party system, are unduly beholden to these pivotal votes, federal distinctions remain politically meaningful at a time when many scholars have argued that they are antiquated and artificial. It is for this reason that even those political actors who support the expansion of racial and economic justice have had to make political calculations that work against such goals. This is perhaps most notable in the way that the two party system has been affected by the pivotal role of the South. With brief exceptions, the two major political parties have been equal opportunity ignorers of racial inequality going back to their formation in the 1820s. To win elections, parties need to appeal to southern whites and racially conservative voters. Democrats as much as Republicans are vividly aware of this, as the actions of national candidates from Bill Clinton to Al Gore to John Kerry have emphatically illustrated. The poor in New Orleans only entered our television screens with Katrina, in part because no major party presidential nominee has made race or poverty a campaign issue in almost four decades.

Aff—Federalism Non-Ux**There is Already a Legal Civil War Over Federal Authority Regarding Health Care—Disad is Totally Non Unique**

Amanda Read, Freelance Author, "Civil war at the Court: The Obamacare lawsuit and America's federal judiciary," Washington Times, May 30th, 2012 (<http://communities.washingtontimes.com/neighborhood/not-your-average-read/2012/may/30/civil-war-court-obamacare-lawsuit-and-americas-fed/>)

OHATCHEE, Al., May 30, 2012 — With more than half of the United States suing the federal government, the Patient Protection and Affordable Care Act (PPACA, or "Obamacare") case is a virtual civil war being waged through the courts. It is ultimately a debate over federalism in a post-New Deal America. This is the introduction to a series of articles designed to investigate and explain the constitutional questions and judicial characters involved in the complex story of the country's most controversial national healthcare legislation.

"We have to pass the bill so that you can find out what is in it away from the fog of the controversy," [said](#) then-House Speaker Nancy Pelosi (D-CA) of PPACA in March 2010. But quite a few citizens were confident that they already knew exactly what was in the bill, and that was what made all the controversy.

The very day the act was signed into law by President Barack Obama, 13 states had filed a complaint against the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, and the U.S. Department of Labor. These plaintiffs were soon joined by 13 more states, one non-profit mutual benefit corporation, and two individuals, ultimately making this a very rare case of more than half the states in the country suing the federal government.

Florida v. Health and Human Services may be destined to become a landmark decision for 21st century America. It will determine whether or not our written Constitution grants the federal government the means to implement socialist-leaning nationalized health insurance and, in principle, nationalized medicine. The implications of the decision will apply to a variety of other issues.

Aff—Federalism Non-Ux (Transportation Infrastructure)**Federal Authority Over Transportation Infrastructure is Strong Now and Not-Going Anywhere**

Robert Jay Dilger, Senior Specialist in American National Government, "Federalism Issues in Surface Transportation Policy: Past and Present," Congressional Research Service, January 5th, 2011

(<http://www.fas.org/sgp/crs/misc/R40431.pdf>)

Perhaps the most difficult factor to account for in the development of federalism relationships in surface transportation policy over time has been the changing nature of American society and expectations concerning personal mobility. Once a rural society with relatively limited expectations concerning personal mobility, America is now a primarily urban/suburban society where automobile ownership and the personal mobility that automobile ownership brings is not only a powerful social status symbol but also a necessity. Obtaining a drivers' license is now a major life-altering event, signifying for millions of American teenagers each year the transition from childhood to adulthood. Because the American bond with the automobile is strong, moving away from a primary focus on building and constructing highways towards a "more balanced" intermodal transportation approach has been made more difficult for policymakers at all levels of government. Moreover, given the public's relatively high expectations concerning personal mobility, Congress has been reluctant to consolidate or devolve surface transportation programs to states, at least in part, because some Members worry that if states are provided additional authority and fail to meet public expectations, that they might be held accountable for that failure on election day. In their view, a more prudent, risk-adverse approach is to provide states additional programmatic flexibility, but retain a federal presence through both program oversight and the imposition of federal guidelines to ensure that states do not stray too far from national objectives.

Aff—Federalism Irrelevant**Federalism is Irrelevant to Current Politics, It's an Academic Fantasy Only**

Boston Review, "Federalism Won't Work," December 04-January 05 (<http://bostonreview.net/BR29.6/rubin.php>)

But there is one interior ganizationalrivalry that many public officials and academics staunchly defend. This is the rivalry between national and state authorities, generally known as federalism. According to federalist doctrine, the states areseparate sovereignties, not subordinate but equal to the nationalgovernment. The dynamic tension between the nation and its states issupposed to create a healthy variation in applicable public policies,while safeguarding our liberties against centralized oppression. Proponents claim that such a conception of American government wasintended by the Constitution's Framers in 1789. This is certainlycontestable on historical grounds, as Samuel Beer and Jack Rakovehave pointed out, but federalism was at least a viable approach at atime when the United States was a rural, lightly administered countrywith an isolated location and a seemingly limitless frontier. It issimply inapplicable to the present-day United States, with its highlyintegrated national economy, it massive regulatory apparatus, and itsresponsibilities and vulnerabilities as the world's dominantpolitical and military power. The continued support for federalism inthis modern context is little more than politicalnostalgia.

Aff—Federalism→ Terrorism

The Operational Checks of Federalism Hampers the Prosecution of the War on Terror

Susan N. Herman, Professor of Law, "David G. Trager Public Policy Symposium: Our New Federalism? National Authority and Local Autonomy in the War on Terror," Brooklyn Law Review, Summer 2004, p. lexis

In the fall of 2001, federalism first challenged federal hegemony in combating terrorism when the FBI requested the assistance of local law enforcement officials in questioning some 5,000 Arab and Muslim men around the country. The Detroit Chief of Police, among other local officials, declined because he thought that cooperating with the federal effort would impede his own law enforcement agenda by undermining his relationship with Arab and Muslim men in his community. n35 The Portland, Oregon Chief of Police also declined, pointing to an Oregon state law that prohibited such questioning in the absence of probable cause. n36 Because Printz had held that local officers could not be "commandeered" to help enforce federal gun control laws, federal and local officials alike assumed that the local law enforcement agents could choose not to cooperate with the FBI interrogation program. [*1211]

On the other hand, the Supreme Court has also held that because of the Supremacy Clause, n37 the federal government may preempt state or local laws that thwart national interests. n38 In the classic case of *Olmstead v. United States*, n39 for example, the Court ruled that the federal government could with impunity ignore a Washington state statute that prohibited wiretapping. Because the Supremacy Clause entitled federal agents to override local laws in promoting their national agenda, the agents were permitted to use evidence of bootlegging that they had obtained by wiretapping *Olmstead's* telephone in disregard of the state law. It is also unquestioned that the federal government has the power to send its own FBI agents into Detroit or to Portland, Oregon, to conduct interrogations regardless of the wishes of the Detroit Chief of Police or the restrictions of Oregon state law. Printz prohibits commandeering local law enforcement officials, but does not prohibit circumventing or ignoring them or their state and local laws.

This facet of federalism, limiting the impact of local autonomy, has also come into play in the war on terror as state and local governments have been making their own diverse decisions about whether the new federal anti-terrorism legislation goes too far in infringing privacy, liberty, free speech, or freedom of association. There are now well over three hundred cities, towns, and villages, as well as four states (Alaska, Hawaii, Maine, and Vermont), that have enacted variations of an ACLU-inspired Bill of Rights Defense Committee resolution expressing disagreement with various Patriot Act provisions and sometimes prohibiting local officials from assisting in federal enforcement efforts in various ways. n40 Because of cases like *Olmstead*, it is generally assumed that these local governments may not resist or limit federal enforcement efforts within their jurisdictions, even though, because of *Printz*, they may not be required to offer their own services to help. But may a local legislature order its local law enforcement officials not to cooperate with federal agents, or [*1212] even impose a fine on its officials if they do provide such assistance? n41

Aff—Russia Doesn't Model Federalism**Russian Federalism is Not Modeled, It's a Totally Different System**

G. Alan Tarr, Professor of Political Science & Director, Center for State Constitutional Studies, Rutgers University, "Creating Federalism in Russia," *SOUTH TEXAS LAW REVIEW* v. 40, Summer 1999, p. 689-690.

For those familiar only with the American federal system, the emerging system of federalism in Russia may well appear strange.

It is not so much the large number of subnational units that make up the Russian Federation, although its eighty-nine constituent units are far and away the most found in any federation. Rather, it is the fact that the Russian Federation includes six different types of constituent units - republics, oblasts, krais, autonomous oblasts, autonomous okrugs, and federal cities - each with its own distinctive status and powers ¹ (see [*690] Appendix for a list of the constituent units of the Russian Federation.). That tensions develop between the federal government and these subjects of the Federation over the scope of their respective powers will likely surprise few Americans - tensions between federal governments and constituent units are endemic in federal systems. ² But contemporary Americans may find surprising the scope of such conflicts, which in Russia extend beyond the allocation of specific powers to the fundamental character of the Federation itself and include conflicts among the subjects of the Federation as well as between the federal government and those constituent units. ³ Equally unfamiliar to Americans is the way that the Russian federal government has sought to resolve its conflicts with the various subjects of the Federation: namely, by negotiating treaties with individual subjects of the Federation that define the powers they can exercise, thereby creating a radically asymmetrical federal system. ⁴